

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 396 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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STATE OF GUJARAT

Versus

BHIKHABHAI C PATEL

Appearance:

MR KC SHAH, APP, for the appellant.

MR MJ PARIKH for MR PB MAJMUDAR for Respondent.

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 24/07/98

ORAL JUDGEMENT

The State has preferred this appeal against the judgment recording acquittal of the accused in Criminal Case No.8004/85 by the Judicial Magistrate, First Class, 3rd Court, Baroda, on 20th January, 1990.

The complaint in the case came to be registered on 26th June, 1985 before the Taluka PSI, Baroda by one Khushalbhai Chhotabhai Patel who is the injured and the complainant in the case, which was originally addressed to the DSP. In fact, the complainant filed an application on 27th May, 1985 against the present accused alleging that the accused who happens to be the elder-brother of the complainant and his son Ghanshyambhai, gave fist blows to him and therefore teeth of the complainant were damaged. On this application, police made inquiry and recorded the statement of the complainant on 26th June 1985. The complainant stated before the Police that accused Bhikhabhai gave him fist blow on his face. He took treatment from S.S.G. hospital and his lower teeth were taken out. Therefore, the Police registered offence under section 325 of the Indian Penal Code against the accused.

The accused was chargesheeted before the Trial Court. The Trial Court recorded evidence, heard both the sides and came to believe that the FIR was late by 7 hours for which no explanation was offered; that the complainant tried to involve Ghanshyambhai, son of the accused in the incident and during investigation it was found by the Investigating Officer that Ghanshyambhai was not present at the place of incident and hence the Trial Court believed that the veracity of the complaint was doubtful. The Trial Court noticed some discrepancies in the evidence of the complaint and his wife Shantaben who were the only star eye witnesses of the incident. The Trial Court also recorded that there was some discrepancy in the medical evidence also. The Trial Court further recorded that in the above mentioned circumstances when the evidence of the complainant and his wife has not stood the close scrutiny, it was necessary that some independent corroboration was required to prove the guilt of the accused and hence the Trial Court extended the benefit of doubt and acquitted the accused.

In this appeal, learned APP, Mr KC Shah urged that reasons assigned by the Trial Court are not proper because the presence of the accused at the place of incident is not denied. It is also proved that the complainant had injury on the teeth and consequently, teeth were taken out due to the injury which he received in the incident. Mr KC Shah further urged that it is not a rule of law that in each case there must be corroboration of independent witnesses. Independent witnesses may not be available. In this case, the complainant is the injured witness. He has received injuries. His wife Shantaben has supported his case

which is further supported by the medical evidence. Therefore this is not a case wherein benefit of doubt can be extended to the accused and the accused be acquitted. It is further urged that there was no reason to disbelieve the complainant and that there is no reason why the complainant would have concocted a false case against the accused. It is urged that at least the accused is required to be saddled with the minimum liability for the fist blow which he inflicted on the injured as proved by the prosecution.

Learned advocate Mr M.J.Parikh appearing for Mr P.B.Majmudar has supported the judgment and reasoning of the Trial Court. Appreciating the evidence afresh and considering the rival contentions albeit, the rule of law is that in each case no independent corroboration is required, if there be interested witnesses, the rule of law provides that the evidence of such witnesses must stand to careful scrutiny. Appreciating the evidence in this case, it clearly comes out, as an admitted fact, that there is long standing previous enmity between the parties for which numbers of civil and criminal litigations have been filed against each other. Further, it is also required to be considered that an attempt was made by the complainant to involve Ghanshyambhai in the incident and major role was attributed to him. It is stated in the complaint as well as in the deposition that Ghanshyambhai caught hold of the complainant and he also inflicted fist blows and the accused inflicted fist blow on the face. When the matter was investigated by the Police, it came out from the evidence of the Investigating Officer that Ghanshyambhai was not at all present at the scene of offence at the time of occurrence. Therefore, in other words, it is the case of prosecution that though the complainant had named Ghanshyambhai to be one of the accused, but on investigation this part stated by the complainant proved to be utterly false. In these circumstances, the Trial Court was right in appreciating the evidence of the complainant with doubt and the Trial Court was further correct in observing that since the evidence of star eye witnesses including the injured is not free from contradictions, independent corroboration is required. Therefore, the reasoning given by the Court below are sound and require no interference at all. There is no explanation for filing the complaint late for about 7 hours. In these circumstances, the appeal of the State fails and is dismissed.

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